IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

Writ Petition No. 17 of 1998. 3

Dinesh Kumar Shrivastava -- Petitioner

Versus

Chairman-cum-Managing Director, S.E.C.L.
Bilaspur and others -- -- Respondents

PETITION UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA FOR ISSUING A WRIT IN THE NATURE OF CERTIORARI, MANDAMUS ETC. & ALSO FOR ISSUING NECESSARY DIRECTIONS

1. Particulars of the Petitioner

Dinesh Kumar Shrivastava
S/o Shri (Late) A.P.Shrivastava,
aged 50 years,
Pay Leader Operator,
Bortunga Colony Mines,
resident of Qtr.No. 126,
P.O. Chirimiri Colliery,
District Surguja (M.P)

2. Particulars of the Respondents

R1S 1- Chairman-cum-Managing Director,
South Eastern Coalfields Ltd.,
Seepath Road,
Bilaspur (M.P)

R1S 2- Mines Superintendent/Manager,
Kurasia Colliery,
Office of Sub Area Manager,
Kurasia Group,
P.O. Kurasia Colliery,
District Surguja (M.P)

R1 3- The Chief General Manager,
South Eastern Coalfields Ltd.,
Chirimiri Area,
Chirimiri,
District Surguja (M.P)

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.No.17 of 1998

Dinesh Kumar Shrivastava

Vs-

Chairman-cum-Managing Director,
S.E.C.L. and others

O R D E R

Post for 28.07.2005

Sd/-
Sunil Kumar Sinha
Judge

Noted.
28/7/05

(81)

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.No.17 of 1998

Dinesh Kumar Shrivastava

Vs-

Chairman-cum-Managing Director,
S.E.C.L. and others

Shri Bharat Rajput, counsel for the petitioner.

Shri P.S. Koshy, counsel for the respondents.

O R D E R
(28.07.2005)

Sunil Kumar Sinha, J

The petitioner has challenged the legality and validity of the impugned order dated 19/26-07-1997 by which, after a complete departmental enquiry the disciplinary authority has imposed the punishment of reversion from the post of Pay Loader Operator Group-B to the Post of Pay Loader Operator Group-C.

(2) Brief facts necessary for disposal of the petition are that on 09.2.1997 the petitioner was working on the post of Pay Loader Operator Group-B. He was served with a charge sheet dated 10.2.1997. The charges are that on 09.2.1997 due to negligent operating of Pay-Loader No.Exc.1002 by the petitioner in the coal fields area, a Rotocol Drill (which was in testing operation in Page Cut Coal) was dashed through stone boulder which damaged the radiator, side support, the bottom foundation and the allied piping of the drill. The petitioner filed his reply denying the charges, whereafter the enquiry officer was appointed on 15.2.1997. He conducted enquiry and submitted his report dated

14/17-5-1997. A show cause notice was issued by the disciplinary authority alongwith enquiry report. The petitioner filed his reply on 02.6.1997 and thereafter, the disciplinary authority imposed the impugned punishment vide order dated 19/26-7-1997 which is under challenge in this petition.

(3) The impugned order has been challenged mainly on three grounds. First of all, it is contended that the finding of the enquiry officer is not based on material on record and is based on extraneous considerations. The findings are perverse and are liable to be ignored. The second contention is that the entire enquiry vitiates as the enquiry officer, first of all, recorded the claims/statement of the petitioner and thereafter conducted the entire enquiry, therefore, a wrong procedure was adopted by him which completely vitiates the enquiry. The third contention is that the enquiry has been conducted violating the principles of natural justice, equity and fair play in as much as many of the documents demanded by the petitioner were not supplied to him and the case of the petitioner has been prejudiced on this ground.

(4) Return has been filed by the respondents. It has been contended by them that there is no violation of fundamental principles of natural justice as the petitioner has been afforded full opportunity of hearing. Merely by asking various questions from the petitioner and general explanation of the petitioner in connection with the alleged charges leveled against him does not vitiate the enquiry. It is further stated that the documents asked vide Annexure P-8 were not the relevant documents for the purpose of this enquiry, therefore, refusal to supply copies of those

documents does not amount to denial of opportunity of hearing. It is also contended that the finding of the fact recorded by the enquiry officer is not based upon any extraneous consideration and the same is based upon positive evidence available on record which cannot be interfered by this Court in writ jurisdiction under Article 226 of the Constitution of India.

(5) I have heard learned counsel for the parties and have also perused the records of the writ petition. So far as the first point in relation to the finding of the enquiry officer is concerned, the law in relation to scope of judicial review is well settled. The apex Court has held in the matter of ***State of T.N. –Vs- Thiru K.V. Perumal and others (1996) 5 SCC 474*** that the question as to whether the charges were established on the material available is beyond the scope of judicial review as the tribunal is not an appellate authority over the departmental authorities. It has subsequently been held by other judgments of the Hon'ble Apex Court that the courts and the tribunal cannot reexamine the evidence and held that the finding of the enquiry officer or the appellate authority was perverse. The High Court does not sit as the appellate authority but it exercises its jurisdiction within the limits of judicial review to correct the errors of law and see the violation of principles of natural justice. The Court or Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no

reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case. Please see ***AIR 1997 S.C. Pg.1900 (Government of Tamil Nadu and others -vs- S. Vel Raj)*** & ***AIR 1997 S.C. Pg. 1908 (Rae Bareli Kshetriya Gramin Bank –vs- Bhola Nath Singh and others)*** and ***(1995) 6 SCC 750 (Union of India and another –Vs- B.C. Chaturvedi.***

(6) If we examine the case in hand, it would appear that in all 7 witnesses were examined by the management and all these witnesses have been cross-examined at length by the petitioner and his co-worker and thereafter the petitioner also examined his witnesses and on the basis of these materials on record, the enquiry officer has recorded the finding that the petitioner was negligent in his duty. There is no force in the first point raised by learned counsel for the petitioner and the same cannot be accepted.

(7) Now coming to the second point about the violation of fundamental principles of natural justice it would apparent from the record that the enquiry officer commenced the enquiry on 20.2.1997. On that date the petitioner and his co-worker were present. The charges were read over to him and in explanation thereof a general examination of the petitioner took place and thereafter enquiry proceeded from time to time. The management witnesses were examined in the presence of the petitioner and his co-worker. In all, 7 witnesses were examined. The witnesses were cross-examined by the petitioner and his co-worker and thereafter

only their evidence were considered. In the said process of conduction of departmental enquiry it cannot be said that the principles of natural justice were not followed and the departmental enquiry vitiates on this ground.

(8) So far as the examination of the petitioner at the first instance prior to examination of other witnesses is concerned, learned counsel for the petitioner could not point out as to what prejudice has been caused to the petitioner in this procedure and how the enquiry vitiates. On the contrary it appears from reply as well as the documents of enquiry that on 20.2.1997, the enquiry commenced, the enquiry officer on that day, first of all, read over the charges to the petitioner to which the petitioner denied. It appears that thereafter the enquiry officer asked to the petitioner as to what does he want to say ? On this only the petitioner said his defence as to how the accident took place and this defence was recorded by the enquiry officer. Further enquiry continued after recording of the statement of the petitioner and then other witnesses of the management were examined. How the enquiry is vitiated if it has been completed by adopting this process could not be pointed out by learned counsel for the petitioner. I do not find any force in this argument also. It appears that no prejudice has been caused to the petitioner if the enquiry has been concluded in the above manner after giving full opportunity of hearing to the petitioner and the arguments of learned counsel for the petitioner that the entire enquiry vitiates on this ground cannot be upheld.

(9) Now coming to the last question as to the non-supply of documents demanded by the petitioner vide annexure P-8, first of all, his application is to be seen. The contents of Annexure P-8 would show that the petitioner had demanded the installation report, literature and catalogue of Pay Loader No.Exc.1002. it has been stated in this application that these documents are required to know about the age of the machine. How these documents are relevant for the purpose of this enquiry has not been disclosed by the petitioner. While dealing the matter in case of ***Chandrama Tewari –Vs- Union of India AIR 1988 S.C. 117*** the apex Court has held that :

> "It is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case. While considering this question it has to be borne in mind that a delinquent officer is entitled to have copies of material and relevant documents only which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other document which may have been relied in support of the charges. If a document has no bearing on the charges or if it is not relied by the enquiry officer to support the charges, or if such document or material was not necessary for the cross examination of witnesses during the enquiry, the officer cannot insist upon the supply of copies of such documents, as the absence of copy of such document will not prejudice the delinquent officer."

(10) Non supply of the copies of documents which are not relevant and which have no bearing on charges or which are not relied upon by the enquiry officer to support the charges does not amount to violation of principles of natural justice. In the present case also, the literature and catalogue of the said Pay Loader have got no relevance with the facts of the case.

Counsel for the petitioner could not point out as to how these documents were relevant either for the purpose of supporting the defence of the petitioner or for the purpose of cross examination of the witnesses or for the purposes of proving any fact in issue. Therefore, in the opinion of this court, denial to supply of copies of these documents which have no bearing with the charges of the case does not amount to violation of principles of natural justice.

(11) In the said facts and circumstances of the case, I do not find any merit in the contentions raised by learned counsel for the petitioner in this petition. The petition has no force and the same is dismissed. However, there shall be no order as to costs.

Sd/-
Sunil Kumar Sinha
Judge

Rao